

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
AT&T Inc.)	File No. EB-06-TC-3997
)	NAL/Acct. No. 200732170057
Compliance with the Commission's)	FRN: 0004305124
Rules and Regulations Governing Customer)	
Proprietary Network Information)	
)	
)	
)	

ADOPTING ORDER

Adopted: August 31, 2007

Released: August 31, 2007

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (the "Bureau") and AT&T Inc. ("AT&T"). The Consent Decree terminates an investigation initiated by the Enforcement Bureau of the Federal Communications Commission ("FCC" or "Commission") regarding AT&T Corp.'s compliance with section 222(c)(1) of the Communications Act of 1934, as amended ("Communications Act" or "Act"), 47 U.S.C. § 222(c)(1), and sections 64.2007, 64.2008(a), 64.2008(d)(2), and 64.2009(a) of the Commission's rules, 47 C.F.R. §§ 64.2007, 64.2008(a), 64.2008(d)(2), and 64.2009(a).

2. The Bureau and AT&T have negotiated the terms of a Consent Decree that would resolve these matters and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation. We also conclude that, in the absence of material new information not previously disclosed to the Bureau, the matters raised in the investigation do not raise any substantial and material questions of fact regarding AT&T's qualifications to be a Commission licensee.

4. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,¹ that the attached Consent Decree **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

¹47 U.S.C. § 154(i).

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") and AT&T Inc. ("AT&T" or "Company"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau investigation regarding AT&T Corp.'s compliance with section 222(c)(1) of the Communications Act of 1934, as amended ("Communications Act" or "Act"), 47 U.S.C. § 222(c)(1), and sections 64.2007, 64.2008(a), 64.2008(d)(2), and 64.2009(a) of the Commission's rules, 47 C.F.R. §§ 64.2007, 64.2008(a), 64.2008(d)(2), and 64.2009(a).

II. BACKGROUND

2. On November 3, 2006, pursuant to section 64.2009(f) of the Commission's rules,¹ AT&T filed a notice on behalf of AT&T Corp. with the Commission reporting failures in its opt-out mechanism.² AT&T stated that due to a shortage of CPNI notice inserts, AT&T Corp. had failed, on two separate occasions, to send customers CPNI notice inserts in bills which resulted in the use of the CPNI of 10,967 customers by AT&T without their consent. The company explained that its Charlotte, North Carolina, Bill Print Center ("BPC"), which was responsible for printing the bills and including the CPNI inserts, ran out of inserts between April 19 and 24, 2006, and again between April 27 and May 1, 2006 but continued to print and send the bills without the CPNI notices. AT&T Corp. then erroneously updated its records to indicate that the customers who did not receive the CPNI notices had consented to the use of their CPNI and subsequently used the CPNI of 10,967 of those customers to market services to them.

¹ 47 C.F.R. § 64.2009(f) states, "Carriers must provide written notice within five business days to the Commission of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly." 47 C.F.R. §64.2009(f).

² See Notification Under Section 64.2009(f), Letter from Davida Grant, Senior Counsel, AT&T Inc., to Marlene Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-115 (filed November 3, 2006) ("November 3 Opt-Out Failure Notice").

3. The Bureau met with AT&T for further discussion of these AT&T Corp. opt-out failures on November 8, 2006, and issued a Letter of Inquiry (“LOI”) to AT&T on December 19, 2006.³ AT&T submitted its response to the LOI on January 10, 2007.⁴

III. DEFINITIONS

4. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Act” means the Communications Act of 1934, as amended.
 - b. “AT&T” means AT&T Inc. and any affiliate, d/b/a, predecessor-in-interest, parent companies and any direct or indirect subsidiaries of such parent companies, or other affiliated companies or businesses and their successors and assigns. For purposes of the Investigation and corresponding Compliance Plan, as described within this document, AT&T only includes AT&T Corp.
 - c. “AT&T Corp.” means AT&T Corp., a wholly-owned subsidiary of AT&T Inc.
 - d. “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - e. “Commission” or “FCC” means the Federal Communications Commission.
 - f. “Effective Date” means the date on which the Commission releases the Adopting Order.
 - g. “Investigation” means the investigation commenced by the Bureau’s December 19, 2006 Letter of Inquiry to AT&T.
 - h. “Order” or “Adopting Order” means an Order of the Bureau adopting the terms and conditions of this Consent Decree without change, addition, or modification, and formally terminating the above-captioned Investigation.
 - i. “Parties” means AT&T and the Bureau.

IV. AGREEMENT

5. AT&T agrees that the Bureau, by delegated authority of the Commission, has jurisdiction over it and the subject matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

³ See Letter of Inquiry from Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau, to Jackie Flemming, Executive Director, Federal Regulatory, AT&T Inc. (December 19, 2006) (“December 19 LOI”).

⁴ See Letter from Davida Grant, Senior Counsel, AT&T Inc., to Colleen Heitkamp, Chief, Telecommunications Consumers Division, Enforcement Bureau (January 10, 2007), (“January 10 Response”).

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the Investigation. In express reliance on the covenants and representations contained herein, and to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of this matter and in accordance with the terms of this Consent Decree, AT&T agrees to the terms, conditions, and procedures contained herein.

7. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by AT&T with the requirements of the Act or the Commission's rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, AT&T does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree.

8. In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, AT&T agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of three hundred fifty thousand dollars (\$350,000) within thirty (30) days after the Effective Date. This voluntary payment does not constitute a fine or penalty for, or admission of, the violation of any law. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 358340, Pittsburgh, Pennsylvania 15251. Payment by overnight mail may be sent to Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, Pennsylvania 15262-0001, Attn: FCC Module Supervisor. Payment by wire transfer may be made to: ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6229. Please include your NAL/Acct. No. with your wire transfer remittance.

9. To resolve and terminate the Investigation, and to ensure compliance with the Commission's CPNI opt-out rules, AT&T agrees to implement the following Compliance Plan ("Plan"). The Plan measures set forth in this paragraph shall be applicable only to AT&T Corp.:

A. Distribution of CPNI Opt-Out Notices Via Bill Insert

- i. AT&T's Marketing Organization ("Marketing") shall provide written instructions to the AT&T BPC or other entity responsible for the printing and distribution of customer bills regarding distribution of CPNI opt-out notices in customer bill inserts.
- ii. Each time the BPC is instructed to distribute CPNI opt-out notices via a bill insert, the BPC shall:
 - (a) monitor its inventory of CPNI inserts to ensure that it has an adequate supply to complete each bill cycle scheduled to include such inserts;
 - (b) promptly contact Marketing if it determines that it has an insufficient supply of CPNI inserts to complete a particular bill cycle to obtain further instructions;

- (c) identify any bill cycle where customers did not receive an insert and provide that list to Marketing who will make a decision whether to send the CPNI insert with those customers' next bill round or to send out a separate mailing;
 - (d) provide written confirmation to Marketing that BPC processed each billing cycle scheduled to include a CPNI insert according to Marketing's instructions and did not experience (or further experience) a shortage of CPNI insert inventory.
- iii. Marketing shall not update its records to signify opt-out consent for customers who were supposed to receive the CPNI inserts in a particular billing cycle until it has received written confirmation from BPC as set forth in 9(A)(ii)(d) above.

B. Training

AT&T shall provide annual CPNI training to Marketing employees responsible for managing distribution of CPNI opt-out notices. The training will focus on the federal CPNI opt-out requirements and the terms of the Plan as described in paragraph 9 of this Consent Decree.

C. Reporting Non-Compliance

AT&T shall report any non-compliance with this Plan to the Bureau within thirty (30) days after the discovery of non-compliance. AT&T shall certify at the end of the two (2) year term that it is in compliance with the terms of the Plan. Such certification must be mailed within fifteen (15) days after the two-year anniversary of the Effective Date of this Consent Decree to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Room 4-C244, Washington, D.C. 20554, and must include the file number listed above. AT&T will also send an electronic copy of its certification to other Telecommunications Consumers Division staff as directed by the Division Chief.

D. Term of the Plan

AT&T will implement this Compliance Plan within sixty (60) days of the Effective Date of this Consent Decree. The terms of this Compliance Plan will expire two (2) years after the Effective Date of this Consent Decree or upon the termination of the opt-out requirements set forth in sections 64.2001-2009 of the Commission's rules, 47 C.F.R. §§ 64.2001-2009, whichever is earlier.

10. The Bureau agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree to initiate, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against AT&T, concerning the matters that were the subject of the Investigation, provided that AT&T satisfies all of its obligations under this Consent Decree. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, or

the existence of this Consent Decree, to institute, on its own motion, any proceeding, formal or informal, or take any action on its own motion against AT&T with respect to AT&T's basic qualifications, including its character qualifications, to be a Commission licensee or authorized common carrier. Nothing in this Consent Decree will prevent the Bureau from instituting or recommending to the Commission any new investigation or enforcement proceeding against AT&T in the event of any alleged future misconduct involving violation of this Consent Decree, or violation of the Act or the Commission's rules. Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act, 47 U.S.C. § 208, against AT&T for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding.

11. AT&T's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order. Provided the Bureau issues an Adopting Order, AT&T waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order.

12. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither AT&T nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AT&T and the Commission will waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree.

13. In the event that this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. By this Consent Decree, AT&T neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

15. AT&T agrees that any violation of the Order or of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

16. The Parties agree that if any provision of this Consent Decree is inconsistent with any subsequent rule or order adopted by the Commission, that provision will be superseded by such Commission rule or order.

17. This Consent Decree may be signed in counterparts.

For: AT&T Inc.

For: Federal Communications Commission

Date

(AT&T Signature)

Date

Kris A. Monteith
Chief, Enforcement Bureau